



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,979	08/05/2003	Hartmut Strobel	DEAV2002/0056 US NP	8786
5487	7590	01/18/2006	EXAMINER	
ROSS J. OEHLER AVENTIS PHARMACEUTICALS INC. ROUTE 202-206 MAIL CODE: D303A BRIDGEWATER, NJ 08807			POWERS, FIONA	
			ART UNIT	PAPER NUMBER
			1626	
DATE MAILED: 01/18/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/634,979

Applicant(s)

STROBEL ET AL.

Examiner

Fiona T. Powers

Art Unit

1626

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,5,9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 6-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/29/03, 11/2/05</u> . | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1626

Receipt is acknowledged of the information disclosure statements filed September 29, 2003 and November 2, 2005, which have been entered in the file.

Applicant's election with traverse of Group II, Claims 1, 6, 7 and 8 where X is S and claim 3 in the reply filed on October 26, 2005 is acknowledged. The traversal is on the ground(s) that the claimed compounds have a substantial structural feature and share a common utility. This is not found persuasive because the heterocyclic ring bound to the amide group can vary since X can be  $\text{NR}^{30}$ , S, O,  $\text{CH=CH}$ ,  $\text{N=CH}$  or  $\text{CH=N}$ .

The requirement is still deemed proper and is therefore made FINAL.

Claims 2, 4, 5, 9 and 10 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on October 26, 2005.

Claim 3 is objected to because of the following informalities: claim 3 does not end in a period. Appropriate correction is required.

Art Unit: 1626

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ritchey (US 4560549), cited or Alanine et al. (WO 01/97786), cited by applicants.

The references disclose the claimed compounds and pharmaceutical compositions where X is S and R<sup>5</sup> is phenyl or heteroaryl. Note Compound (b) of the abstract of Ritchey and Examples 1-25, 27-38, 41-45, 48-51, 53-63 and 66-75 of Alanine et al.

Claims 1, 3, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kume et al. (US 4675331) or Ueno et al. (US 6020470) or Petrie et al. (US 6342514) or British Patent 1,345,552 or British Patent 1,596,383, cited.

The references disclose the claimed compounds where X is S and R<sup>5</sup> is phenyl, naphthyl or heteroaryl. Note Examples 1 to 3 and Compound Nos. 3-5, 15-27 and 29-33 of Table 1 and Comparative compound A in column 9 of Kume et al.; Example 14 in column 19 of Ueno et al.; the benzothiazole compounds of Drawing

Art Unit: 1626

Sheet Nos. 23,, 24, 33, 47-49, 53-57 and 72 of Petrie et al.;  
Example Nos. 3, 7-12, 16, 17, 22 and 23 of Tables I-III of  
British Patent 1,345,552; and Compound Nos. 4, 10, 18 and 21 of  
British Patent 1,596,383.

Claims 1, 3, 7 and 8 are rejected under 35 U.S.C. 102(b) as  
being anticipated by Henzi (US 2399026) or Abe et al. (US  
4929623), cited.

The references disclose the claimed compounds and  
pharmaceutical compositions where X is S and R<sup>5</sup> is phenyl,  
naphthyl or heteroaryl. Note Examples 1 to 4 of Henzi; and  
Example 5 in column 27 and Compound Nos. 51, 54, 55 and 56 of  
Table 5 in columns 39-40 of Abe et al.

The references made of record and not relied upon show the  
state of the art.

Any inquiry concerning this communication or earlier  
communications from the examiner should be directed to Fiona T.  
Powers whose telephone number is 571-272-0702. The examiner can  
normally be reached on Monday - Friday 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are  
unsuccessful, the examiner's supervisor, Joseph K. McKane can be  
reached on 571-272-0699. The fax phone number for the  
organization where this application or proceeding is assigned is  
571-273-8300.

Art Unit: 1626

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Fiona T. Powers*  
Fiona T. Powers  
Primary Examiner  
Art Unit 1626

ftp  
January 11, 2006